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FISCAL IMPACT STATEMENT

LS 6866

BILL NUMBER: HB 1134

NOTE PREPARED: Jan 30, 2008

BILL AMENDED: Jan 29, 2008

SUBJECT: Sex Offender Internet Offense.

FIRST AUTHOR: Rep. VanDenburgh

FIRST SPONSOR: Sen. Steele

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Registration and Consent Concerning Internet Use: It requires a sex or violent offender to report the offender's electronic mail address and certain Internet usernames. It requires a sex or violent offender to sign a consent form authorizing the:

- (1) search of the sex or violent offender's computer or device with Internet capability, at any time; and
- (2) installation on the sex or violent offender's computer or device with Internet capability, at the sex or violent offender's expense, of hardware or software to monitor the sex or violent offender's Internet usage.

Removing Sexually Violent Predator Designation: The bill specifies the court in which a petition must be filed to remove the designation as a sexually violent predator or an offender against children, and provides that the petitioner has the burden of proving that the designation should be removed.

Enhanced Penalty: It increases the penalty for child molesting to a Class B felony if the child is compelled to submit to the fondling or touching by force or the threat of force.

Sex Offenders on School Property: It provides that, as a condition of probation, a sex offender who is an offender against children and is convicted of certain crimes (sex offender) shall be prohibited from being on the property of a primary or secondary school. It provides, however, that:

- (1) if the sex offender attends a primary or secondary school, the sex offender shall be prohibited from being on the property of a primary or secondary school other than the school

that the sex offender attends; and

(2) if the sex offender is a parent or guardian of a child who attends a primary or secondary school, the sex offender shall be required to notify the school (and if the school is a public school, the school corporation) in writing that the sex offender is an offender against children and shall be prohibited from being on the property of the school that the child attends unless the sex offender is attending a meeting with a teacher or school administrator and is escorted by an employee of the school or school district while on school property.

Sex Offender Residency Offense: It makes it a sex offender residency offense, a Class D felony, for a person to knowingly or intentionally reside within 1,000 feet of a charter school or a child care center, child care home, or child care ministry. It also specifies that, for purposes of probation and the commission of a sex offender residency offense, the distance between the residence of the sex offender and another piece of property is measured from the property line of the sex offender's residence to the property line of other piece of property.

Sex Offender Internet Offense: It makes it a Class D felony for a sex offender to use a social networking Internet web site or an instant messaging or chat room program that the offender knows is frequented by children and if the offender contacts a child or a person the offender believes is a child through the website or program.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Registration and Consent Concerning Internet Use:* The Department of Correction (DOC) does not anticipate additional cost to collect additional information concerning email addresses and Internet usernames.

Sex Offenders on School Property: The court may revoke a person's probation if the person violates a condition of probation during the probationary period. If the court finds that the person has violated a condition of probation, the court may continue the person on probation, with or without modifying or enlarging the conditions; extend the person's probationary period; or order execution of all or part of the sentence that was suspended at the time of initial sentencing. If more sex offenders are revoked from probation and, instead, serve a term of incarceration, costs for the DOC could increase.

(Revised) *Enhanced Penalty; Sex Offender Residency Offense; and Sex Offender Internet Offense:* There are no data available to indicate how many individuals may be convicted of a sex offender Internet offense established under the bill or the number of additional offenders who may be convicted of a sex offender residency offense based on the addition of charter schools and child care facilities. Both of these offenses are Class D felonies. There are also no data available to indicate how many may be subject to Class B felony child molesting by using or threatening to use force.

Depending upon mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, and a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. The average length of stay in DOC facilities for all Class D felony offenders is approximately 10 months and for all Class B felony offenders is approximately 3.7 years.

(Revised) Background and Additional Details:

Sex Offender Registry: In December 2007, there were an estimated 11,285 sex offenders and sexually violent predators on the state's sex offender registry. Of those, it is estimated that 6,805 (60%) were convicted of offenses that constitute the basis for sexually violent predator status.

Probation Supervision: On December 21, 2006, there were 23,398 adult felony offenders on post-sentence probation and 13,341 non-status delinquents on post-judgement supervision. In 2006, of the 31,712 adult probation dispositions for all felony offenses, 3,886 (12.3%) were revoked for a new criminal violation and 5,010 (15.8%) were revoked for a technical violation of probation. For juvenile probation dispositions, of the total 23,793 dispositions, 772 (3.0%) were committed to a correctional facility.

Child Molesting: On average between 2002 and 2006, there were 276 offenders committed to a state correctional facility for child molesting as a Class C felony which involves performing or submitting to any fondling or touching. There were no offenders admitted for a sex offender residency offense in 2006.

Explanation of State Revenues: *Registration and Consent Concerning Internet Use:* By requiring sex offenders and sexually violent predators to register and update email addresses and Internet usernames in the sex offender registry and to execute waivers allowing access to the Department of Correction and the State Police, the bill may allow the state to receive or retain federal funds. [The Adam Walsh Child Protection and Safety Act of 2006 provides funding to jurisdiction based on implementation of the Act and allows a jurisdiction to lose 10% of funding from the Edward Byrne Memorial State Justice Assistance Grant Program. Indiana is expected to receive \$1.8 M from the Byrne Grant in FFY 2008.]

Enhanced Penalty; Sex Offender Residency Offense; and Sex Offender Internet Offense: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D or a Class B felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Registration and Consent Concerning Internet Use:* The bill could increase costs for local law enforcement to collect information concerning email addresses or Internet usernames. However, the legislative body of a county may pass an ordinance for an annual fee of up to \$50 and a change of address fee of up to \$5 to defray costs.

Enhanced Penalty; Sex Offender Residency Offense; and Sex Offender Internet Offense: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Enhanced Penalty; Sex Offender Residency Offense; and Sex Offender Internet Offense:* If additional court actions occur and a guilty verdict is entered, local governments would

receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, DOC.

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